IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINATING SUMMONS NO.309 OF 2003
IN
SUIT NO. 686 OF 2000

Ms. Lyla Jehangir (nee Ghaswala) .. Plaintiff
v/s.
R. Lentin & Ors. ..Defendants

Mr. Shailesh Shah with Mr. Vastal Shah i/b. C.N. Mehta for the plaintiffs.
Mr. Dinesh Pednekar for defendant nos.2 and 3 in Suit 686 of 2000.

AND
ORIGINATING SUMMONS NO.447 OF 2003
IN
SUIT NO. 738 OF 2003

Ms. Lyla Ghaswala ..Plaintiff
v/s.
Zenia Jehangir ..Defendant

Mr. Shailesh Shah with Mr. Vastal Shah i/b. C.N. Mehta for the plaintiffs.
Mr. Shyam Diwan with Mr. C.N. Kapadia with Lata Bachani i/b. I.R. Joshi and Co. for the defendants.
Mr. Sanjay Jain for the Applicants in Ch.S.1143/2003.

CORAM: S.U. KAMDAR, J.

DATE : 19TH JANUARY, 2005.

JUDGEMENT :

1. These two originating summons are taken out by

the plaintiff under Rule 238 of the High Court Rules, (Original Side). This Rule 238 inter-alia contemplates taking out of an application by an executor or an administrators of a deceased person or any of other person claiming to be interested in the relief sought as creditor, devisee, legatee, heir or legal representative, or as beneficiary under the trusts of any deed. This category of persons can apply for determination of any of the questions or matters specified therein without an administration of the estate or trust. The matter specified under the High Court Rule 238 inter-alia provides for determination of a question affecting the rights and/ or interests of the person claiming to be creditor, devisee, legatee, heir or legal representative or beneficiary. The present two originating summons are taken out by the plaintiff who is the legal heir and representative of deceased Mrs. Pillo Ghaswala as also person claiming to be the beneficiary of the estate of the said deceased under the last will and testament of the said Mrs. Ghaswala. Some of the material facts are as under :

2. One Mrs. Pillo M. Ghaswala executed her last will and testament dated 12.4.1989 giving various bequeaths to various persons. Mrs.Pillo Ghaswala expired on 7.10.1989 leaving behind her two daughters namely Mrs. Lyla Jahangir and Ms. Anita Ghaswala. The said Lyla Jahangir had a grand daughter named Zenia. On 28.10.1994 this court granted probate inrespect of the said will and testament of Pillo Ghaswala dated 12.4.1989.

3. On 25.7.1989 one of the properties in which Ghaswala had an undivided one third interest was sold for an approximate sum of Rs.15 crores and the share of the said deceased in the said property 'Gajdar House' was determined for a total sum of Rs.5 crores. Over and above the said interest, Ghaswala also had a flat on the second floor of the said building Gajdhar House in her capacity as a tenant. It is the case of the plaintiff that on 18.11.1994 from the sale proceeds received of the said property, Gajdhar House, the executors of the will bought a bungalow at Pune for a sum of Rs.75 lakhs and further expended a sum of Rs.9.44 crores as expenses towards its

renovation and furnishing. The balance amount of around Rs.4 crores an odd were invested by the executors in various investments according to the desire of Lyla Jahangir one of the daughters of the deceased.

4. Sometime on or about 8.7.1998 the original executor of the said will was discharged. It is the case of the plaintiff that thereafter the plaintiff has discovered that infact the property which was purchased at Pune was not for a sum of Rs. 75,00,000/-. On valuation done it was found to be only of a sum of Rs.30,00,000/-. Subsequent, to the discharge of the executor the administrative General of the court is incharge of the estate. Insofar as the said Pune property is concerned, that is, the bungalow has been leased out by the plaintiff in favour of a third party named Mr. Mukesh Dhingra.

5. A Miscellaneous Petition No.55 of 1999 was filed in this Court by the plaintiff and a notice of Motion No. 1566 of 1999 was taken out and by the order and judgment dated 22.12.1999 the matter was

decided against the plaintiff. Being aggrieved by the said decision of the learned single judge of this Court an appeal was preferred and the same is admitted by the division bench of this court and pending.

6. It seems that in the meantime, the differences and disputes commenced by and between the plaintiff and her daughter Zenia Jahangir and therefore in view of the differences and disputes between the plaintiff and her own daughter, the plaintiff filed a suit being Suit No.686 of 2000 and took out Originating Summons No. 309 of 2000 inter-alia for interpretation of some of the clauses of the said last will and testament of Mrs. Pillo Ghaswala. At that stage, the age of Zennia Jahangir was around 18 years. However, on 29.10.2003 the said daughter Zennia Jahangir has attained the age of majority of 21 years. On her attaining the age of majority further disputes arose by and between the plaintiff and her daughter who is the defendant herein and thus a second suit was filed being Suit No. 738 of 2003 and the second Originating Summons has been taken out

being Originating Summons No. 447 of 2003.

7. Both these Originating summons are before me for determination. Though various questions are framed, in my opinion, I am called upon to determine these following questions of law. The first is whether in view of the Clause-15 of the last will and testament of Mrs. Ghaswala executors were legally justified in buying the bungalow in Pune in place and instead of flat as contemplated under the said Clause. The second question of law which I am required to determine is whether on reading of various clauses of the said last will and testament of Mrs. Ghaswala, the bequeath in favour of the Plaintiff in respect of various properties was absolutely vested in her favour and consequently further bequeath in favour of her daughter Zenia Jahangir becomes void and/or infructious or a whether limited interest is vested in the Plaintiff to hold the assets till the daughter Zenia Jahangir attains the age of majority and thereafter the property must stand bequeath and/or vested in favour of the said daughter Zennia Jahangir. The third question which I

am required to determine is if the bequeath is vested in the defendant Zenia Jahangir on her attaining the age of majority then the interest accrued on the various investments and or benefits of the immovable properties during the period when she was a minor would accrue to her and vest in her along with all properties on her attaining majority or whether the plaintiff will be entitled to the said interest even if the properties and investments ultimately vest in daughter Zenia on her attaining the majority.

8. I am required to determine aforesaid three questions in rather unfortunate circumstances, where there is a dispute between the plaintiff on one hand who is the natural mother of the defendant and the daughter on the other hand who has just attained the age of majority. The relationship between the plaintiff and the defendant has become so bitter and strain that the present litigation has been vehemently contested in this court for a long period of time. Be that as it may be, insofar as I am concerned, I am required to determine the aforesaid question of law and accordingly I take up the said

issue for consideration. Before however, I deal with the rival submissions of the parties in respect of the said interpretation of the will it is necessary to reproduce certain clauses of the will which are relevant for the purpose of determination of question of law which are framed by me hereinabove :

> "6. I have two daughters, viz. MRS. LYLA DARIUS JEHANGIR and MISS ANITA GHASWALA. (I have called my daughter Anita Ghaswala by her maiden name as she has already filed a petition for divorce in respect of her marriage to Mr. Dallas Toddywala. My elder daughter Mr. Lyla Darius Jehangir is an extravagant and irresponsible girl and is subject to fits of depression and it is for this reason that I DIRECT my Trustees by this my will under the trust created hereunder to hold all properties bequeathed and devised by me to her for the benefit of her daughter Zenia and the said property bequeathed to Lyla shall be held upon trust for the benefit of her daughter Zennia and upon Zennia completing the age of 21 years, my Trustees shall hand over all such property to Zennia absolutely.
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> 7. As stated above in view of my daughter Lyla being an extravagant an irresponsible girl and being subject to fits of depression, in the matter of sale and disposal of the flat on the 2nd floor of Gazdhar House at 45, Warden Road, Bombay 400 026 as mentioned in Clause 15 herein, the decision of my Trustees shall be binding on her and the bequest to her shall therefore be subject to the decision of my Trustees.

11. I have a locker in the Union Bank of India, Forbes Building, Home Street, bearing no. 5063 in the joint names of myself and my daughter Lyla. I direct my Trustees that the contents of the said locker shall belong to Lyla but shall be held upon trust by my Trustees to be handed over to my grand-daughter Zennia on her attaining the age of 21 years. The password for the said locker is "Lulubello" and the keys of the said locker are kept in my Godrej safe. I direct that none of the contents of the said locker can be sold.

13. I have certain jewellery in two boxes at my house being indicated by the name of each of my two daughters Lyla and Anita. I give bequeath and devise the contents of the box bearing the name of my daughter Anita to my daughter Anita absolutely. I however direct that none of the articles in these boxes are to be sold and that if my daughter Anita so desires, the designs of the articles of jewellery may be changed to other desired designs. As far as the box bearing the name of my daughter Lyla is concerned, the contents thereof shall belong to her but shall be held upon trust by my Trustees for my grand-daughter Zenia and the contents thereof shall be handed over by my Trustees to my grand-daughter Zenia on her attaining the age of 21 years. I, however, direct that none of the contents of the said box are to be sold and if, however, any of the rings do not fit Lyla, then the designs can be changed but in no way will there be a sale of the said jewellery.

14. I have also jewellery kept in boxes that have been specified by the names of my two daughters, Lyla and Anita and my grand-daughter Zenia and one of the said boxes also has the name of my cousin Mrs. Temi Banderia. I direct that the contents of the box bearing the names of my daughter Anita and

my cousin Mrs. Temi Randeria shall belong to them absolutely. However, as far as the box bearing the name of my daughter Lyla and my grand-daughter Zenia are concerned, the contents thereof shall be held in trust by my Trustees to be handed over upon her attaining the age of 21 years. I direct however that none of the contents of the said boxes shall be sold but that the same should used by the ultimate beneficiaries. I own several watches which are in the house which are not named. I direct that the same shall be divided equally between my two daughters Lyla and Anita and my grand-daughter Zenia. However, such of the watches that would come to the share of my daughter Lyla and my grand-daughter Zenia shall be held in trust by my trustees for my grand-daughter Zenia to be handed over to my grand-daughter Zenia upon her attaining the age of 21 years.

15. I have a flat on the 2nd floor, of Gazdar House at 45, Warden Road, Bombay 400 026 belonging to me. I direct my Trustees to dispose of the said flat as they may in their sole discretion deem fit and out of the sale proceeds of the said flat, I direct my Trustees to purchase two flats, one to be bought in the joint names of my daughter Lyla and my grand-daughter Zenia and the other flat to be bought in the name of my daughter Anita to be held by them absolutely. I state that I am the absolute owner of this flat and neither Mrs. Temi Randeria nor Mr. Sola Guzdur have any claim in respect of the said flat.

16. I have a saving account in Union Bank of India, Bombay Samachar Marg Branch, bearing Account no. 27411 which is standing in the joint names of myself and my daughter Lyla. I direct that the amounts, if any, standing to the credit of that account shall be paid over to my daughter Lyla who shall then hold it absolutely. I give bequeath and devise all

amounts standing to the credit of that account to my daughter Lyla absolutely.

18. I have articles which are lying in the drawing room, a list whereof is mentioned hereinbelow :-

1 White chandelier near the window.
2 Wall bracket chandelier.
1 Red persian carpet (near my room).
1 Czech Crystal bowl with matching Tray kept on the table near my room.
1 Crystal bell and ash tray (kept near my room).
2 Japanese figurines on the Piano.
1 Marble statue of Florence Nightingale.
2 Wall tapestry mounted on wooden plaques.
1 T.V. and Video with rack.
2 Small blue Satsuma vases with white flowers.
1 Italian Murano Pink vase with two matching swans.
1 Large Italian Murano red wall plate with painted figures on its.
1 Italian vase with matcing stand in white and gold.
Show case pieces-all right side pieces (facing the show case)except for wedgewood).
All wedgewood pieces of blue colour.
2 Capi di Monti wall plates.
1 Centre large carved tables (kept in the centre of the drawing room)
1 Japanese vase kept on the side of the Piano on the higher shelf.
2 red murano fishes and one murano. white and grey whale.
1 White japanese vase with coloured flowers standing on the music cabinet.
1 Italian inlaid music table.
1 Onyx Table.
1 Bronze dancing girl statue.
Furniture to be equally divided.
Showcase can also be cut in half if desired.

. GIVE BEQUEATH AND DEVISE the same to

my daughter Lyla. However, the same shall be held upon trust by my Trustees for the benefit of my grand-daughter Zenia and the said articles shall be handed over to my grand-daughter Zenia upon my grand-daughter Zenia attaining the age of 21 years. My daughter Lyla, however, shall be entitled to use the said articles till my grand-daugter Zenia attains the age of 21 years.

21. I GIVE BEQUEATH AND DEVISE the following two items to my grand-daughter Zenia to be held in trust by my Trustees and be handed over to her on her attaining the age of 21 years. My Trustees shall decide the place where the same shall be keep during such time as my grand-daughter Zenia attains the age of 21 years. The items are as under :-

. 1 Marble statue of a girl to be kept in charge for her by Anita.

. 1 Steinway Piano (upright) to be kept for her by Anita.

24. I HAVE certain articles in the drawing room which are s follows :-

1 Chandelier and 2 wall brackets.
1 Italian piece of swans in white kept on the dining table.
1 carved corner piece on the left hand side (facing the wall) and all articles on it.
1 Porcelaine statue of a crying girl.
1 Blue Indian Tea Set.
12 Indian Plates and 12 side plates of white with orchids.
1 English crockery dining set.
1 Japanese Tea set.
6 Cut glass Czech glasses and 1 jug kept in show case.
10 Dining room chairs.
1/2 Dining table can be cut up if desired.
1 Side table.
1 Large size print and 2 small size prints.

Glasses to be equally divided.
1 Tapestry wall hanging.
1 Allwyn Fridge.
2 Sideboards (1 show case and 1 cabinet.)

I GIVE BEQUEATH AND DEVISE the same to my daughter Lyla. However, the same shall be held upon trust by my Trustees for the benefit of my grand-daughter Zenia and the said articles shall be handed over to my grand-daughter Zenia upon my grand-daughter Zenia attaining the age of 21 years. My daughter Lyla, however, shall be entitled to use the said articles till my grand-daughter Zenia attains the age of 21 years.

26. I DIRECT further that all other articles except for the ones stated above of coffee cups, extra serving dishes, plates and beer mugs shall be divided equally between my daughter Lyla and my grand-daughter Zenia on one part and my daughter Anita on the other part and shall be so handed over to them.

27. I have silverware which belongs to me and which is kept at the several places indicated hereunder:-

2 Large round trays with design borders.
2 Oval plain trays plus one round tray.
1 Round tray.
2 Cake trays (silver plated).
1 Ice-cream bowl with 6 matching bowls and spoons (kept in the showcase of dining room).
1 Small seis (prayer seis) and 1 long plated coffee tray (fuldani).
1 Large plain silver bowl with two sweet dishes kept in the showcase.

One Dozen Ordinary forks)
One Dozen Ordinary Knives)
One Dozen Ordinary teaspoons)
One Dozen Ordinary spoons) All kept in

8 Large serving spoons) the Dining
8 Large serving forks) Room.

. I GIVE BEQUEATH AND DEVISE the same to my daughters Lyla. However, the same shall be held upon trust by my Trustees for the benefit of my grand-daugther Zenia and the said articles shall be handed over to my grand-daughter Zenia upon my grand-daughter Zenia attaining the age of 21 years. My daughter Lyla, however, shall be entitled to use the said articles till my grand-daughter attains the age of 21 years.

33. I DIRECT my Trustees to sell all the kitchen furniture and utensils and to divide the sale proceeds of such sale between my daughter Lyla and my daughter equally. As far as the furniture in the passage is concerned which belongs to me, if my daughter Lyla and my daughter Anita agree to divide the same between themselves, the same should be so divided or I DIRECT my Trustees that in the event of my daughters Anita and Lyla not agreeing to the sale, to sell the same and to divide the sale proceeds between my daughters Lyla and Anita in equal proportions.

40. I HAVE a one third share in the Trust of Gazdhar House at 45, Warden Road, Bombay 400 026, the other shares belonging to my cousin Jehangir Gazdar staying at Paliscimo, Warden Road and Jimmy Gazdar staying at Fair-Lawns, Juhu. My said 1/3rd share shall be equally distributed between my daughter Lyla and my daughter Anita. The share of my daughter Lyla shall be kept in Trust by my Trustees to be handed over to my grand-daughter Zenia on her attaining the age of 21 years. I GIVE BEQUEATH AND DEVISE my daughter Anita’s share in the 1/3rd share in the Trust of Gazdar House to my daughter Anita absolutely.

> 42. I am holding a Public Provident Fund Account with the State Bank of India, Main Branch No.18976 in which the nomination has been made in the name of my daughters Lyla and and Anita. The balance in that account as of that date should be around Rs.70,000/-. I GIVE BEQUEATH AND DEVISE the balance in that account to my daughters Lyla and Anita in equal proportions. I, however, direct that my Trustees should hold Lyla's one-half share in the said account upon trust for the benefit of my grand-daughter Zenia and the said balance shall be handed over to my grand-daughter Zenia upon my grand-daughter Zenia attaining the age of 21 years.
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> 46. I GIVE BEQUEATH AND DEVISE all the rest and residue of my estate and effects, movable and immovable whatsoever and wheresover situate to which I may be entitled at the time of my death as also the the Fixed Deposits, shares, bank deposits and other investments (hereinafter collectively referred to as "my residuary estate" to my daughters Lyla and Anita. As far as the share of my daughter Lyla in my residuary estate is concerned, the same shall be held upon Trust by my Trustees for the benefit of my grand-daughter Zenia and the said articles shall be handed over to my grand-daughter Zenia upon my grand-daughter Zenia attaining the age of 21 years. My daughter Lyla, however, shall be entitled to use the said articles till my grand-daughter Zenia attains the age of 21 years.

9. Before I deal with the rival submissions of the parties which are advanced before me, I would like to revisit the principle of the interpretation

of the will. The principle of the interpretation of the will has been well settled right from the judgement of the Privy council in the case of *Rameshwar Baksh Singh vs. Balraj Kuar AIR 1938 PC 187* wherein it has been held that the principle of the interpretation of the will is to gather the intention of the testator on over all reading of the said will. In the case of **DilHarshankar C. Bhachech v/s. Controller of Estate Duty, Ahmedabad reported in 1986(1) SCC 701 where in it has been held that :**

> . These principles are also well-settled. But these principles will not strictly be applicable in the instant case because this appeal is concerned with the construction of the Will in question and the Will in question must be construed in such a manner as to find out the true intention of the executants or the testator and testatrix. For that it is well-settled that the Will must be read as a whole. Secondly the expression must be read consistently.
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> . One has to bear in mind that we are concerned with the construction of the will and the true effect of the provisions thereof. Whether the deceased Kamlashankar Gopalshankar had the disposing power over the share of the property of Mahendrababa, his wife, acquired by him would depend not on how he has treated it but the true effect of the will. Furthermore, there is no question of contemporaneous conduct because the conduct of one of the parties subsequent to the death of one of the executants long after the execution

> of the will cannot be described as "contemporaneous conduct". We need not, therefore detain ourselves on the question of "contemporaneous exposition" by conduct of the parties in the facts of this case."

9. Thereafter the Apex Court has once again in the case of **Usha Subbarao v/s. B.N. Vishveswaraiah and Ors. (1996) 5 SCC 201** held as under :

> " We must, therefore, construe the Will to find out the intention of the testator in this regard. With regard to construction of Wills the law is well settled that intention has to be ascertained from the words used keeping in view the surrounding circumstances, the position of the testator, his family relationship and the Will must be read as a whole. (See: Gnanambal Ammal v. T. Raju Ayyar (SCR at p.955) Navneet Lal v. Gokul (SCR at pp.927. 928)]"

10. Whilst considering the first question of law as to whether the executors were justified in buying the bungalow at Pune, even though the Clause-15 of the said last will and testament inter-alia gives a direction to the trustees to purchase the two flats, one to be bought in the joint names of the plaintiff and the defendant and another flat to be purchased in the name of Anita Ghaswala and to be held by them

absolutely. Insofar as this particular issue is concerned it is undoubtedly true that this clause expressly provides for buying of the flats by the trustees. However, the learned counsel for the defendant Mr. Diwan brought to my attention that infact the purchase of the property at Pune is not an act on the part of the trustees but the plaintiff directly herself has entered into a contract for purchase of the said bungalow at Pune. He further pointed out that the agreement dated 18.12.1994 for purchase of bungalow is directly between Anita Shah and the plaintiff herself. At that time the defendant's daughter was a minor and therefore the plaintiff had executed the said agreement on behalf of herself and on behalf of her minor daughter, the defendant herein. I have perused the said agreement dated 18.12.1994. After perusing the said agreement I am satisfied that insofar as the purchase of the said bungalow is concerned the trustees or executors of the said will are not at all involved and it is an independent transaction entered into by the plaintiff herself. Once the plaintiff herself has purchased the property contrary to the directions contained

under Clause-15 of the said will it is not open for the plaintiff to raise any such dispute inrespect of the same. If there is any breach of Clause-15 of the said will then it is committed by the plaintiff herself and not by the trustees or executors of the said will. However, the learned counsel for the defendant has further pointed out that after purchasing the said property, the plaintiff has also entered into a lease agreement with one Mr. Mukesh Dhingra. The said lease was executed for a nominal amount of annual rent of Rs.24,000/- per month. This lease document is also executed between the plaintiff on her own behalf and on behalf of her minor daughter in 1998. Even in respect of the said lease the trustees of the executors are not parties. The learned counsel for the defendant therefore contended that infact the plaintiff with intention to make a profit out of the said amount received from sale of one-third share in Gajdar House has entered into this transaction of purchase of the Pune property and thereafter is letting the same out on lease. The learned counsel for the defendant submitted that the transaction has been entered into by the plaintiff

herself. No person other than the Plaintiff herself can be aware of the reasons as to why such a transaction was entered into by her contrary to Clause-15 of the will at such a highly inflated price. Mr. Diwan further submitted that even in respect of the lease, the leasee has been giving a pittance as lease rent being an amount of only Rs.2,000/- per month for the entire bungalow at Pune. The learned counsel for the respondent has further contended that obviously the prices mentioned in the sale deed is not a real price but an inflated price specially provided for in respect of this transaction by the plaintiff herself for extraneous reasons and the plaintiffs are seeking interpretation of the Clause-15 of the said will as if she has nothing to do with the purchase of the said bungalow. According to Mr. Diwan in the circumstances aforestated the plaintiff is not entitled to seek any interpretation of the Clause-15 of the said will. According to him the conduct of the plaintiff disentitles her from raising any such issue. I am of the opinion that on plain reading of Clause-15 it is clear that only flat could have been purchased by the executors out of the

sale proceeds of Gazdhar House. The plaintiff has however entered into her own transaction in contravention of the Clause-15 of the last will and testament of Mrs. Ghaswala. In view thereof though the Clause-15 provides for purchase of only a flat hence the executors cannot be held liable for contravention of Clause-15 in view of the fact that the contravention is by the plaintiff herself in entering the transaction of purchase of bungalow on her own accord.

11. This leads me to the next question which has been raised by the learned counsel for the plaintiff. The question which has been raised is whether on a true and proper interpretation of various clauses of the will an absolute bequeath is conferred on the plaintiff and that subsequent provision to provide for a bequeath of the same property to the defendant on her attaining the age of 21 years is infact void. The learned counsel for the plaintiffs has in support of the aforesaid proposition of law contended that once the bequeath is made absolute in favour of a person, the testator ceases to have any rights in

respect of the said properties to create further rights in favour of a third party because a person to whom the bequeath is vested absolutely becomes a contingent owner thereof and on death of the testator becomes an absolute owner. It is therefore contended that the further bequeath of the said property can only be made by the person to whom the said bequeath is conferred absolutely and the testator has no right to confer any further interest in respect of the said properties.

12. Keeping in mind, the aforesaid law which is declared by the Apex Court, I am required to construe the last will and testament of Mrs. Pillo Ghaswala dated 12.4.1989. While considering the various clauses of the will I find that in Clause-6 the testator has expressed her intention not to confer an absolute bequeath in favour of the plaintiff herein. In Clause-6 of the said will it has been stated that the plaintiff was the elder daughter of the deceased Ghaswala who was an extravagant and irresponsible girl and was subject to fits of depression and keeping in mind her character and conduct the

testator intended to vest the bequeaths in the grand daughter rather than it be flittered away by her. It is true that the testator intended not to absolutely vest the bequeath in her favour. This intention is further magnified by the testator in Clause-7 of her will where she has once again stated that she is an extravagant and irresponsible girl and therefore all the rights pertaining to the management of the property is vested with the trustees and that the testator is conferred with only a limited bequeath so as to look after her need during her lifetime but did not vest any assets and property in her favour but ultimately the bequeath is vested in her daughter, the defendant herein on her attaining the age of 21 years. These two clauses, Clause-6 and 7 makes absolutely clear the intention of the testator. Apart therefrom on a true and proper reading of each of the clause where bequeath is conferred ultimately on the defendant as daughter of the plaintiff, the testator has carefully chosen the words vesting the rights absolutely in favour of the defendant herein. However when the testator intended to confer an absolute bequeath on the plaintiff alongwith her

daughter, the testator has in her will infact provided accordingly. In Clause-16 that the amounts standing in the Union Bank of India, Forbes Building, Bombay, Samachar Marg, in the joint name of herself and the plaintiff herein was absolutely bequeath to the plaintiff and it is provided that she will hold the same absolutely. Similarly, in Clause-33 also absolute bequeath is conferred in her favour. In Clause-34 the bequeath of five large chinese jars are also been made absolutely in favour of the plaintiff herein. In Clause-35 clothes pertaining to the testator are also effected on the plaintiff herein without any intention to provide such bequeath in favour of the defendant. While referring to the contents thereof in respect of the various assets, the testator being conscious of the fact that she does not want to give any absolute bequeath has therefore conferred only a limited bequeath in her favour. On a true and correct reading of the will and keeping in mind, the testators intention as is clear from clause after clause, in my mind, there is no doubt that the intention of the testator was not to confer any any absolute bequeath of various

properties in favour of the plaintiff who was the daughter of the deceased testator but conferring only a limited interest in her favour till the daughter attains the age of majority.

13. The learned counsel for the plaintiff has relied upon various authorities. He has relied upon the judgment of Calcutta High Court in the case *Golak Behari Mondal and Ors v/s. Suradhani Dassi and Ors. AIR. 1939 Calcutta 226.* The second is the judgment of the Madras High Court in the case of *Mahalakshmi Ammal v/s. G. Vijayasubramaniam and Ors AIR 1977 Madras 87.* The third judgment relied upon by the learned counsel for the plaintiff is *Shantilal Babubhai and Ors. vs. Bai Channi and Ors. reported in AIR 1973 Gujarat 146 (V 60 C 20)* and the last judgment relied on by the plaintiff is the division bench's judgment of this court in the case of *AnilKumar Narharrao Satarkar and Ors vs. Shrinivas alias Digambar Achutrao Mudhalwadkar and Ors reported in 1994(2) Bom.C.R. 106.* By relying upon the aforesaid judgment the learned counsel for the plaintiff has contended that the law is well settled

that the court must sit in the arm-chair of the testator and decide what was the intention of the deceased testator in executing the said will. There is no quarrel as to this proposition because as stated above, there is a citation of the Apex Court directly which requires the Court to interpret the will by bearing in mind the intention of the testator as gathered from the clauses of the will. Apart therefrom, the second contention which is sought by the learned counsel for the plaintiff that wherever there is an absolute bequeath then the subsequent bequeath in favour of the third party must be ignored and must be treated as void. To this principle of law also I have no quarrel. However, on the interpretation of the last will of Mrs. Ghaswala particularly the clauses which are relied by the plaintiff such as Clauses-11 and 14 I do not see any absolute bequeath in favour of the plaintiffs herein.

14. However the learned counsel for the plaintiff has relied upon Clause-11 of the said will and has strongly contended that the said Clause-11 contemplates absolute bequeath in favour of the

plaintiff herein. He further contends that the word ‘belong’ appearing in Clause-11 indicates that what was intended by the testator was absolute bequeath to the plaintiff. According to him the subsequent words in the said Clause-11 which provides for handing over all the belongings of the locker to grand daughter Zenia on her attaining the age of 21 years are the redeemed words and are not to be taken into consideration because according to the learned counsel for the plaintiff the bequeath is absolutely in favour of the plaintiff by virtue of the use of the word ‘belong’. He contends that what are the words used to express the intention of the testator is not relevant and therefore once the word belong is used it should be interpreted to mean that the intention of the deceased was to make absolute bequeath to the plaintiff. In the light of the clauses of the will which I have considered herein above as also on plain and simple reading of Clause-11 I am not able to accept the contention advanced by the learned counsel for the plaintiffs. I am of the opinion that Clause-11 only grants a conditional vesting in favour of the plaintiff and

not absolute vesting. It is clear from the reading of Clause-11 particularly in the setting of the other clauses of the will that the intention of the testator was not to absolutely bequeath the belongings of the locker to the plaintiff herein but what was contemplated by the testator was to permit the plaintiff to utilise all the belongings of the locker till the grand daughter Zenia attains the age of majority of 21 years. In my opinion to accept the contention of the learned counsel for the plaintiff would not only mean to rewrite the Clause -11 of the will but it would tantamount to defeat the intention of the testator which is expressly provided for particularly in Clause-6 and 7 of the said will.

15. The learned counsel further relied upon Clause-14 of the will and has contended that Clause-14 also provides for an absolute handing over of bequeath of the properties namely the jewellery in favour of the plaintiff herein and it does not contemplate that the jewellery shall be ultimately handed over to the grand-daughter Zenia. I am unable to accept the aforesaid contention also because

Clause-14 expressly states that what ever is provided in the box bearing the name of the plaintiff and grand daughter Zenia the same are to be held by the trustees in trust till the daughter attains the age of 21 years and thereafter the same is required to be handed over to the said defendant. I therefore find that the contention raised in this behalf also has no merits and the same is without any substance.

16. Thereafter the learned counsel has relied upon Clause-40 of the said will and it has been contended that insofar as one-third share in the Gajdhar House is concerned it has been provided in Clause-40 that one-third share has to be equally distributed between Plaintiff and another defendant and deceased Anita. According to the learned counsel for the plaintiff once the same is provided for equal distribution then the subsequent provisions made by the testator that the said share of the plaintiff shall be kept in trust by the trustees to be handed over to the defendant no.1 on her attaining the age of majority is a void bequeath and the same cannot be operated upon. According to the learned counsel for the

plaintiff the first part of Clause-40 provides an absolute bequeath of 50% of one-third share in Gajdhar House in favour of the plaintiff herein and therefore the subsequent provision that the share of the plaintiff shall be held by the trustees is inoperative, void and without any substance. I am not inclined to accept the said contention also for the very same reasons as mentioned in respect of the other clauses. The testators intention covered in the clauses of the will makes it clear that the bequeath in favour of the plaintiff is only conditional and not absolute. The testator has herself given reasons for the same in the will. However merely till the defendant attains the age of majority the provision is made for equal distribution of the bequeath in favour of the plaintiff and another daughter Anita would not mean absolute vesting of the said property in favour of the plaintiff. Clause-40 does not even directly or indirectly bequeath at all the 50% of one-third share in the Gajdhar House to the plaintiff. The said share is infact vested in the daughter of the plaintiff and she is only permitted to hold the same

in trust for the defendant till the defendant attains the age of majority. Thus on true and correct interpretation of Clause-40 in the light of surrounding circumstances in which the will is executed and in the context of the other clauses of the will, I hold that there is no absolute vesting in favour of the plaintiff at all.

17. This leads me to the third and last contention advanced by the learned counsel for the plaintiff that at the same time when there is no vesting in favour of the plaintiff as contemplated by the learned counsel then still insofar as the interest accrued on the properties and investment is concerned the same vests absolutely in the plaintiff till the defendant attains the age of majority. In my opinion my answer to this question must be in favour of the defendant and against the plaintiff for the simple reasons that the interest must follow the principal. In the present case if the investments belongs to the defendant then the interest must also belong to the defendant. It is because the interest is nothing but an accrual of benefits on the said amount and or out

of the said properties. In my opinion therefore it is clear that the defendant is entitled to interest and or other benefits on the properties which have been acquired even prior to her attaining a majority. Apart therefrom it is also clear that nowhere in the will it is provided that interest accrued during the period of minority of the defendant would vest in the plaintiff. On the contrary the deceased intended that the defendant should enjoy the said properties absolutely on her attaining majority therefore she would obviously enjoy the said properties along with interest. In the light of the above I am of the opinion that the defendant is entitled to all the benefits of interest or other benefits arising out of the property which was held by the plaintiff during her period of minority. In the aforesaid view of the matter I pass the following order :

> Both the Originating Summons and the suit shall stand disposed of in terms of the opinion given above. Orders accordingly. No order as to costs.

SD/-

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